

REMARKS

This is in response to the Office Action mailed on March 29, 2000, in which claims 1-8, 25, 29, 32 and 62 were pending. This Amendment reinstates canceled claims 9-20, and adds new claims 63-97. In addition to pending claims 1-8, 25, 29, 32 and 62, the effect of the reinstatement and new claims is to reintroduce all of the claims the parent Reissue Application No. 08/859,561 had the Amendment After Final dated October 19, 1999 in that application been entered. All of the added claims in this Amendment had been indicated to include allowable subject matter over the prior art in the parent Reissue Application No. 08/859,561.

Applicant respectfully thanks the Examiner for the telephone interview conducted between the undersigned and the Examiner on August 15, 2000. In the Interview, the Examiner and Applicant discussed the procedural posture of the case with regard to claim numbering and the maintenance fee payment on the original patent, as well as submission of a supplemental declaration and the original patent. The Examiner and Applicant reached agreement that a numerical dimensional limitation would appear to overcome the recapture rejection.

The Office Action rejected the application under 35 U.S.C. 251 as not having record of the 3.5 year maintenance fee payment. As discussed in the telephone interview, the maintenance fee for U.S. Patent No. 5,417,017 was paid January 20, 1999. Enclosed herewith is a copy of Applicant's PETITION FOR ACCEPTANCE AND RECORDATION OF PAYMENT OF A MAINTENANCE FEE FILED PRIOR TO EXPIRATION OF PATENT PURSUANT TO 37 C.F.R. §§ 1.182, 1.366, 1.377 and/or 1.378. As the Examiner indicated in the telephone interview, Applicant requests suspension of prosecution on this reissue application pending a decision on Applicant's Petition regarding the maintenance fee payment. Once Applicant's Petition regarding the maintenance fee payment is granted, Applicant requests entry of the remainder of this Amendment to place the application in condition for an indication of allowability of all claims over the prior art.

In the Office Action, the Examiner objected to the reissue application under 37 C.F.R. §1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. With this Amendment, Applicant submits a copy of the assent filed with the parent reissue

application. If the Examiner requires a newly executed assent, Applicant will have one newly executed and submit the newly executed assent upon request.

The Office Action objected to the application as failing to offer to surrender the original patent. With this Amendment, Applicant submits a copy of the offer from the parent reissue application. If the Examiner requires a newly executed offer, Applicant will have one newly executed and submit the newly executed assent upon request. Applicant intends to submit the required Original patent upon indication of otherwise allowable claims.

The Reissue Oath was objected to as defective for failing to cover the preliminary amendment filed October 21, 1999. Applicant will submit the required supplemental Reissue Oath upon indication of otherwise allowability.

In the Office Action, the Examiner objected to the proposed drawing correction based on informalities. With this response, applicant submits the proposed amended drawing marked "Amended". With this Amendment, the objection to the drawings is overcome. Formal drawings incorporating the change will be provided prior to issuance.

The Office Action objected to the specification as failing to include the changes made by the Certificate of Correction filed May 19, 1997. A substitute specification incorporating these changes is provided herewith.

Claims 1, 4, 7, 8, 25, 29, 32 and 62 were rejected under 35 U.S.C. §251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. Specifically, the Examiner indicated that the dimensions of the pores has been omitted from the above-identified claims, and that the prior limitation "wherein each pore has a linear dimension in all directions less than the maximum linear dimension of the cross section of a head of a species of termite to be controlled" had been argued as a basis for patentability. With this Amendment, a numerical limitation defining the dimensions of the pores has been added to every independent claim in the Reissue application. With this Amendment, the recapture rejection is overcome.

Claims 1-8 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 2,017,106 to Sandell ("Sandell"). With this Amendment, claim 1 is amended to further clarify

the invention, requiring the pores both to permit fluid flow therethrough and to have a maximum opening dimension of less than 3.25 millimeters. The Sandell structure is directed to waterproof sheet material. Sandell does not disclose or suggest the use of porous sheet material as a termite barrier. Claims 2-8 depend from amended claim 1. Since Sandell does not disclose or suggest the limitations of claim 1, Sandell does not disclose or suggest the limitations of claims 2-8. Therefore, all of claims 1-8 are allowable over the cited reference. Reconsideration and notice to that effect is respectfully requested.

Claims 1, 4, 25, 29 and 32 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 4,549,385 to Cohen et al. ("Cohen"). Specifically, the Examiner indicated that Cohen's reinforcing steel "is provided with open pores." Similar to claim 3 which was not rejected over Cohen, amended claims 1 and 25 now include a dimensional limitation requiring the pore to have a maximum opening dimension less than 3.25 millimeters. Cohen does not disclose or suggest the use of porous material having openings with a maximum opening dimension less than 3.25 mm for use as a termite barrier. Therefore, Cohen does not teach, suggest or disclose every element of Claims 1 and 25. Claims 4, 29 and 32 depend from claims 1 and 25. Therefore, Cohen does not teach, suggest or disclose every element of claims 4, 29 and 32. Claims 1, 4, 25, 29 and 32 are allowable over the cited art. Reconsideration and notice to that effect is respectfully requested.

Claim 62 was rejected under 35 U.S.C. §102(b) as being anticipated by the Translation of Les Termites Et La Protection Des Constructions reference ("Les Termites"), and separately rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 2,316,660 to Bailey ("Bailey"). As amended, claim 62 requires that the pores have a maximum opening dimension of less than 3.25 millimeters. Neither Les Termites nor Bailey teach, suggest or disclose a termite barrier having pore openings with a maximum opening dimension of less than 3.25 mm. Claim 62 is not taught, disclosed or shown in the cited art. Claim 62 is allowable over the cited art, and reconsideration and notice to that effect is respectfully requested.

With this amendment, claims 1, 25 and 62 are amended, original claims 9-20 are reinstated with amendments to 9, 10, 12-14, 17, 18 and 20, and claims 63-97 are added to reinstate canceled claims 24, 26-28, 30, 31 and 33-61 from the parent reissue. The application containing

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pending claims 1-20, 25, 29, 32 and 62-97 is in condition for allowance. Reconsideration and notice to that effect is respectfully requested. Applicant respectfully requests a suspension of prosecution of the Reissue Patent until the attached petition is decided. The Examiner is invited to contact the undersigned at the telephone number listed below if such a call would in any way facilitate allowance of the application.

Respectfully submitted,

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